

No. 16,416

IN THE

United States Court of Appeals
For the Ninth Circuit

AUDY W. DEERE,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

On Appeal from the District Court for the
District of Alaska, Fourth Division

APPELLEE'S BRIEF

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STATEMENT OF FACTS

On May 5, 1958, appellant was found guilty after a jury trial in the Justice Court for the Fairbanks Precinct, Territory of Alaska, of the offense of operating a motor vehicle while under the influence of intoxicating liquor, in violation of Section 50-5-3 of the Alaska Compiled Laws Annotated, 1949, as amended. A judgment was thereupon entered adjudging him guilty and sentencing him to pay a fine of \$250.00 and 30 days revocation of his driver's license.

Appellant appealed to the District Court for the District of Alaska, Fourth Division, was tried in that court on February 18, 1959, and was found guilty after a jury trial *de novo*. On March 3, 1959, a judgment was entered sentencing appellant to pay a fine

of \$500.00, to revocation of his driver's license for 30 days, and to serve 30 days in jail. The jail sentence was suspended on condition that he pay the fine. Appellant filed a notice of appeal to this Court on March 3, 1959.

ARGUMENT

While appellant challenges the jurisdiction of the interim Alaska district court to enter the judgment against him, he does not deal with the issue of the jurisdiction of this Court to review the judgment on appeal. Indeed, he apparently concedes that he "is bereft of his right of appeal" in the absence of any provision under the Alaska Constitution providing therefor (Br., p. 7). And the argument that the judgment of the Alaska court is *coram non judge* and that the enabling legislation, in so far as it purports to grant jurisdiction to the interim court, is completely void, is inconsistent with appellant's inarticulated assumption that this Court, in the absence of specific statutory authority, may make such a determination on appeal.

In our brief on behalf of the Attorney General, as *amicus curiae*, in the case of *Parker v. McCarrey*, to which the Court is respectfully referred, we have fully explained the position of the government on the issues involved in this case. As we have there shown, this Court no longer has appellate jurisdiction over the interim Alaska district court, particularly as to state offenses such as the one involved here, not only because of the specific repealer in Section 12 of the

Alaska Statehood Act, but also by operation of law. With the advent of Alaska statehood, the trial court lost its status as a territorial court and assumed the status of a state court, which it retains until the institution of permanent courts. Moreover, as we also show in our brief in *Parker*, even if the interim Alaska district court is considered a federal legislative court, this Court would not have appellate jurisdiction over its proceedings in the absence of specific statutory authority therefor.

Here we have a state offense tried by a court which we believe to be a state court. Such review as appellant may have must necessarily be in the Supreme Court of the United States under its power to review judgments of state courts of last resort.

CONCLUSION

For the foregoing reasons, and for the reasons more fully set forth in the brief on behalf of the Attorney General in the *Parker* case, we respectfully submit that the appellee's motion to dismiss the appeal should be granted.

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May, 1959.